IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11740 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MEENABEN ASHOKBHAI PATEL AND ANOTHER
Versus
SHOBHABEN KISHANCHAND ANDANI AND OTHERS

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Appearance :
MR SUNIT S SHAH with MR PREMAL R JOSHI for the Petitioners
MR KV SHELAT for Respondent No.1

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 01/05/2007

ORAL JUDGMENT

1. **RULE**. Learned advocate Mr.K.V.Shelat waives service of Rule on behalf of respondent No.1

2. The petitioners – defendants are before this Court being aggrieved by order passed below application Exh.125 in H.R.P. Suit No.1529 of 1995 dated 20.03.2007.

Application Exh.125 was filed seeking appointment of Court Commissioner once again, though earlier application Exh.118, seeking appointment of Court Commissioner was granted by order dated 04.10.2006.

3. Learned advocate Mr.Sunit S.Shah, appearing with learned advocate Mr.Premal R.Joshi, for the petitioners vehemently submitted that the second application – Exh.125 dated 17.11.2006, seeking appointment of Court Commissioner was totally misconceived in view of the fact that there was no application alleging breach of the order of the Court, permitting repairs or any injunction order granted by the Court.

4. Having found substance in the submission of learned advocate Mr.Shah, this petition is allowed. Order below application Exh.125 in H.R.P. Suit No.1529 of 1995 dated 20.03.2007 is hereby quashed and set aside. Rule is made absolute with no order as to costs.

At the request of Mr.Shelat, learned advocate for respondent No.1, it is clarified that quashing of the order under

challenge does not mean that the plaintiff – respondent herein has no right to file an application alleging breach of injunction/permitted repairs and to pray for appointment of second Court Commissioner to bring home the contentions of such application.

Learned advocate Mr.Shelat states at the bar that the respondents – original plaintiffs will be filing an application to that effect.

5. As and when such application is filed, the Court below shall consider the same in accordance with law without being influenced by the fact that order passed below application Exh.125 is quashed by this Court.

(RAVI R.TRIPATHI, J.)

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